FILE COPY

FILED

MAR 1 1971

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 89

ON J. LEMON, PRISCILLA REARDON, BETTY J. WORREL, and PENNSYLVANIA STATE EDUCATION ASSOCIATION, PENNSYLVANIA CONFERENCE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, PENNSYLVANIA COUNCIL OF CHURCHES, PENNSYLVANIA JEWISH COMMUNITY RELATIONS CONFERENCE, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA, INC.,

Plaintiffs-Appellants,

VID H. KURTZMAN, as Superintendent of Public Instruction of the Commonwealth of nsylvania, GRACE SLOAN, as State Treasurer of the Commonwealth of Pennsylvania, T. ANTHONY'S ROMAN CATHOLIC CHURCH SCHOOL, ARCHBISHOP WOODS RLS HIGH SCHOOL, UKRANIAN CATHOLIC SCHOOL, GERMAN-TOWN LUTHERAN ACADEMY, AKIBA HEBREW ACADEMY, PHILADELPHIA, MONTGOMERY CHRISTIAN ACADEMY, and BETH JACOBS SCHOOLS OF PHILADELPHIA,

Defendants-Appellees,

and

PENNSYLVANIA ASSOCIATION OF INDEPENDENT SCHOOLS,

Intervenor-Defendant-Appellee.

[*Parties continued on inside cover*]

APPEAL FROM DISTRICT COURTS OF THREE JUDGES FOR, RESPECTIVELY, THE EASTERN DISTRICT OF PENNSYLVANIA, THE DISTRICT OF CONNECTICUT, THE DISTRICT OF RHODE ISLAND, AND THE DISTRICT OF RHODE ISLAND

MOTION FOR LEAVE TO FILE BRIEF FOR CONNECTICUT STATE CONFERENCE OF BRANCHES OF THE NAACP, CONNECTICUT CIVIL LIBERTIES UNION, CONNECTICUT COUNCIL OF CHURCHES, CONNECTICUT JEWISH COMMUNITY RELATIONS COUNCIL, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, RITA JOHNSON, ROBERT S. EARLEY, DONALD L. WASSMAN, LAURA WILEY HANSEN, WILLIAM MANCHESTER AND EDGAR W. DAVIS, *AMICI CURIAE*

and

BRIEF FOR *AMICI CURIAE*

PETER L. COSTAS
111 Pearl Street
Hartford, Connecticut 06103

PAUL W. ORTH
266 Pearl Street
Hartford, Connecticut 06103

Attorneys for Amici Curiae

No. 153

ELEANOR TAFT TILTON, MILDRED H. CLARKE, CAROL D. GOLDSTONE, THEO... GURNEY, HARVEY L. RAISNER, ELISABETH R. SWAIN, WYMON W. PA... PAUL REYNOLDS, RUFUS BLANSHARD, JAY S. ROTH, CARL W. SCHL... NORMAN T. DAVID, HERBERT T. GOLDSTONE, JAMES W. GARDNE... CHARLES L. PENDLETON,

Plaintiffs-Ap...

ELLIOT RICHARDSON, Secretary to the United States Department of Health, E... and Welfare, JAMES E. ALLEN, JR., Commissioner of Education of the United ... MARVIN K. PETERSON, Chairman of the Commission on Aid to Higher Educa... the State of Connecticut, SACRED HEART UNIVERSITY, ANNHURST COL... FAIRFIELD UNIVERSITY, ALBERTUS MAGNUS COLLEGE,

Defendants-Ap...

No. 569

JOHN R. EARLEY, WILLIAM A. HANSON, MADELYN LAW, RALPH F. M... ALSN E. MOSS, FRANK J. SHEALEY, PHYLLIS A. WALTER, MARGARE... CUMMISSKE, CORNELIUS A. CUMMISSKE,

Defendants-Ap...

JOAN DICENSO, DONALD R. HILL, ANN CLANTON, ALICE CHASE, HELEN ... and MARIE FRIEDEL,

Plaintiffs-Ap...

No. 570

WILLIAM P. ROBINSON, JR., Commissioner of Education of the State of Rh... RAYMOND H. HAWKSLEY, General Treasurer of the State of Rhode Isla... CHARLES W. HILL, Controller of the State of Rhode Island,

Defendants-Ap...

JOAN DICENSO, DONALD R. HILL, ANN CLANTON, ALICE CHASE, HELEN ... and MARIE FRIEDEL,

Plaintiffs-Ap...

INDEX

PAGE

ɔTION FOR LEAVE TO FILE BRIEF FOR AMICI CURIAE v

IEF OF AMICI CURIAE 1

Interest of Amici 2

ture of the Actions 4

estions to Which This Brief Is Addressed 6

GUMENT

Summary of Argument 6

Part I—The Fourteenth Amendment Issue 8

The Nature of Nonpublic Schools 9

The Educational Purpose of the Nonpublic Schools Does Not Balance the Enrollment Imbalance Effect 14

The Entire Pattern of State Involvement in the Operation of the Nonpublic Schools Establishes Their Discriminatory Practices as State Action 16

Financial Support of Institutions With Discriminatory Enrollment Patterns Is Prohibited State Action 20

The Facts Establish That Governmental Aid to Nonpublic Schools Constitutes a Violation of the Fourteenth Amendment 23

PAGE

Part II—The Issue of Standing to Sue 25

Any Negro Parent of a Child in the Public Schools Has Standing 26

Any Taxpayer Should Have Standing to Challenge an Act Siphoning Off His Tax Funds for an Unconstitutional Purpose 32

CONCLUSION 33

TABLE OF AUTHORITIES

Cases:

Block v. Board of Education, 226 F. Supp. 208 (E.D.N.Y. 1964) 25

Board of Education v. Allen, 392 U.S. 236 14

Branch v. Board of Education, 204 F. Supp. 150 (E.D.N.Y. 1962) 25

Brown v. Board of Education, 347 U.S. 483 (1954) 8, 25

Burton v. Wilmington Parking Authority, 365 U.S. 715, 725 (1961) 18, 20

Coffey et al. v. State Educational Finance Commission et al., 269 F. Supp. 1389 (S.D. Miss. 1969) 21

Cooper v. Aaron, 358 U.S. 1 (1958) 22, 24

Flast v. Cohen, 392 U.S. 83 (1968) 25, 29, 32

Hobson v. Hanson, 269 F. Supp. 401 (D.C.D.C. 1967) 25

Kramer v. Union Free School District, 395 U.S. 621 (1969) 8

PAGE

Norwalk Core v. Norwalk Redevelopment Agency, 395 F.2d 920 (1968) 31

Poindexter et al. v. Louisiana Financial Assistance Commission et al., 258 F. Supp. 158 (E.D. La. 1966) 21, 31

Reitman v. Mulkey, 387 U.S. 369 (1967) 21, 22

Smith v. Allwright, 321 U.S. 649 (1944) 17

United States Constitution:

Fourteenth Amendment 8, 23

Connecticut Statutes:

Public Act 791, Sec. 3h 15
Public Act 791, Sec. 12d 15
Connecticut General Statutes, Sec. 10-16 18
Connecticut General Statutes, Sec. 10-18 18
Connecticut General Statutes, Sec. 10-24 18
Connecticut General Statutes, Sec. 10-184 17
Connecticut General Statute, Sec. 10-185 17
Connecticut General Statutes, Sec. 10-186 17
Connecticut General Statutes, Sec. 10-203 19
Connecticut General Statutes, Sec. 214a 19
Connecticut General Statutes, Sec. 217a 18
Connecticut General Statutes, Sec. 10-266a 18
Connecticut General Statutes, Sec. 10-281 19
Connecticut General Statutes, Sec. 16-324 19

Regulation:

Regulation for Public Act 791, Sec. 10-281n-7 15

Index to Appendices to Brief

PAGE

Appendix J, Enrollment Statistics 35

Appendix K, Sectarian Applicant Schools 36

Appendix L, Disadvantaged Enrollment in Applicant Schools 37

Appendix M, Distribution of Disadvantaged Children in Larger Towns (Over 10,000 Students) 38

Appendix N, Affidavit of Robert S. Early 39

Appendix O, Affidavit of Edgar W. Davis 42

Appendix P, Affidavit of Rita Johnson 45

Appendix Q, Minority Enrollment 49

Appendix R, Enrollment of Nonpublic Schools in 1968-1969 Log. 50

Index to Exhibits to Brief

Plaintiffs' Exhibit 8, Statistics on Minority Group Enrollment of Connecticut Schools Reporting to National Association of Independent Schools 51

Plaintiffs' Exhibit 14, Letter John Q. Tilson Explaining Enrollment Information in Exhibit 8 54

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 89

ALTON J. LEMON, *et al.*,
Plaintiffs-Appellants,

—VS.—

DAVID H. KURTZMAN, *et al.*,
Defendants-Appellees.

No. 153

ELEANOR TAFT TILTON, *et al.*,
Plaintiffs-Appellants,

—VS.—

ELLIOT RICHARDSON, *et al.*,
Defendants-Appellees.

No. 569

JOHN R. EARLEY, *et al.*,
Defendant-Appellants,

—VS.—

JOAN DICENSO, *et al.*,
Plaintiffs-Appellees.

No. 570

WILLIAM P. ROBINSON, *et al.*,
Defendants-Appellants,

—VS.—

JOAN DICENSO, *et al.*,
Plaintiffs-Appellees.

ON APPEAL FROM THREE-JUDGE UNITED STATES DISTRICT COURT RESPECTIVELY FOR THE EASTERN DISTRICT OF PENNSYLVANIA, THE DISTRICT OF CONNECTICUT, THE DISTRICT OF RHODE ISLAND AND THE DISTRICT OF RHODE ISLAND

MOTION FOR LEAVE TO FILE BRIEF FOR CONNECTICUT STATE CONFERENCE OF BRANCHES OF THE NAACP, CONNECTICUT CIVIL LIBERTIES UNION, CONNECTICUT COUNCIL OF CHURCHES, CONNECTICUT JEWISH COMMUNITY RELATIONS COUNCIL, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, RITA JOHNSON, ROBERT S. EARLEY, DONALD L. WASSMAN, LAURA WILEY HANSEN, WILLIAM MANCHESTER AND EDGAR W. DAVIS, *AMICI CURIAE*

1. *Interest of Amici Curiae*: The *amici* are organizations concerned with the First and Fourteenth Amendments to the Constitution, Black and white parents of children in the public schools, a public school administrator, and taxpayers. They are the original parties plaintiff in *Johnson et al.* v. *Sanders et al.*, Civil Action No. 13,432, in which on November 19, 1970, a three-judge District Court for the District of Connecticut adjudged and decreed that 1969 Public Act 791 (now Connecticut General Statute Section 10-281-a-v, entitled "Non-Public Schools Secular Education Act") is unconstitutional in its entirety, and that defendant state officials are enjoined from contracting with or reimbursing nonpublic schools for the purpose of secular education services pursuant to such Act (—— F. Supp. ——). Previously a motion to dismiss had been granted as to the organizational plaintiffs due to lack of standing. Although the statute was attacked as unconstitutional on both First and Fourteenth Amendment grounds, the Court's decision of unconstitutionality is based only on the Establishment Clause ground. Nevertheless, the Court saw fit to comment on the Fourteenth Amendment ground, as is set forth hereinafter.

Connecticut's statutory scheme for aiding sectarian elementary and secondary schools has significant different from the statutes involved in the above-captioned cases,

but the basic First Amendment questions in *Johnson* are similar. What is very different about *Johnson* is that there is a significant record and developed legal position to support the Fourteenth Amendment claim made explicitly in *Lemon* and implicitly in the other above-captioned cases. The *amici* are cognizant that any decision adverse to Plaintiffs made in the captioned cases would adversely affect their position in *Johnson*. They are concerned that this Court does not presently have before it a reasonably completely developed picture of the facts regarding nonpublic schools education and the applicable law. It is particularly the facts and the law regarding nonpublic school education which gravely bear upon any First Amendment resolution, which Plaintiffs deem vital to bring to the attention of this Court in its consideration of these cases.

The present Plaintiffs in *Johnson* are a number of Connecticut residents and taxpayers including two Black parents and one white parent of children in public schools and a superintendent of a public school system. The organizations which were among the original Plaintiffs, share as common objectives the separation of Church and State and the opposition to the use of public funds for the support in whole or in part of any nonpublic schools, whether sectarian or not, with policies and practices, by purpose or effect, which exclude or otherwise discriminate against persons by reason of race, economic status, or religion.

The picture in Connecticut may be regarded as reasonably representative of nonpublic school education throughout at least a major portion of the United States. The *Johnson* case is the only one presenting a fully developed record on the racial effect of aid to private schools. Thus, the *amici* can argue the clear interrelationship of the Fourteenth Amendment issue to the First Amendment and sup-

port the standing of Plaintiffs in *Lemon* to raise the Fourteenth Amendment issue. A decision with respect to the First Amendment claim in each of the captioned cases will clearly affect their position as will an adverse decision on the issue of standing in *Lemon*. It is primarily evidence of such discrimination in Connecticut which these *amici* seek herein to present. (As Plaintiffs in *Johnson*, they were represented by the undersigned attorneys and Leo Pfeffer.)

2. *Facts and Questions of Law Which Can Only Be Adequately Presented by the Amici.*

It is only these *amici* who have made a Fourteenth Amendment "record" below. The significant Fourteenth Amendment question expressly raised in *Lemon* was foreclosed by the granting of the motion to dismiss for the lack of standing. Furthermore, the *amici* could not earlier present this vital material to this Court.

Although the memorandum of decision in *Johnson* was filed on October 15, 1970, the Court's order was not filed until November 20, 1970. The period for appeal was stayed by the filing of a Motion to Amend Judgment and for a Stay, by Defendant-Intervenors on November 27, 1970, which was denied on December 23, 1970. It would appear that such appeal need not be filed until February 16, 1971. The Attorney-General for Connecticut has repeatedly and publicly stated that *Johnson* will be appealed to this Court. Plaintiffs will join promptly in the request that this Court note probable jurisdiction, and will seek to expedite the appeal.

However, because of the importance of the material the *amici* seek to present, and because the appeal in *Johnson* is apparently not going to be taken until the deadline, Plain-

tiffs' counsel in all the above-captioned cases joined in a heavily documented motion, filed on or about January 25, 1971, to postpone the oral argument scheduled for the session beginning February 22, 1971 until the appeal in *Johnson* was ready for argument. Should the Court deny such motion (to which no counsel for the Defendants consented), it is essential that the Court grant this motion in order that it have presented to it, in brief and argument, the facts and arguments that Plaintiffs' counsel in all the above cases, as well as the *amici*, consider so crucial.

3. *The Relevancy of the Material*:

Johnson includes significant documentary evidence constituting a record and demonstrating that most nonpublic elementary and secondary schools are segregated not only on the basis of religion (if they are denominational as most are) but also on the basis of race, and financial resources. It is believed that the *amici* have established in *Johnson* that the effect of supporting sectarian institutions with tax funds will lead to the ultimate result of promoting two school systems especially in the larger cities—a public school system predominantly black, poor and inadequate, and a nonpublic school system predominantly white, affluent and superior.

Although the Court in *Johnson* did not find for Plaintiffs on the Fourteenth Amendment claim because of alleged lack of standing, which Plaintiffs intend to dispute, it recognized the significance of this issue in its statement appearing in the Memorandum of Decision that this disposition "should not be construed to imply that, assuming a qualified Plaintiff, this Court regards the issue itself as frivolous or without substance." —— F. Supp. —— at ——; Slip Opinion, pp. 24-25.

Plaintiffs in *Lemon* and in *Johnson* have strongly asserted that support of sectarian private institutions violates the Fourteenth Amendment. Although the Fourteenth Amendment issue was not especially raised in the *Tilton* and *DiCenso* cases, it is inherent as a factor to be weighed in any decision therein. This issue would be fully considered as vital to the First Amendment issues in each of the captioned cases because the First Amendment must be recognized as existing in harmony with the Fourteenth Amendment.

Tax support of private sectarian institutions is to be avoided because government will thereby recognize and condone *de jure* or *de facto* discrimination in private schools which the government will finance in part through the purchasing of services or of facilities and equipment; and because government will encourage the establishment of further private schools in which *de jure* or *de facto* discrimination may be practiced while at the same time government funds are being received.

The data in *Johnson* established the discriminatory effect of sectarian private schools. They have relatively few students of other than the sponsoring religion, and the disparity in enrollment of minority groups and economically disadvantaged students is overwhelming. Such data readily show the effect on the public school system, particularly in urban areas. The environmental situation and the ramifications of any Act to support sectarian institutions upon the public education system and upon minority groups cannot be overlooked. *Reitman* v. *Mulkey*, 387 U.S. 360 (1967).

4. *Consent to Filing of Brief by Amici*:

Plaintiffs in the captioned cases consent to the granting of this motion and to the filing of the attached brief by the *amici curiae*.

WHEREFORE, the *amici curiae* respectfully move under Rule 42(3) for permission to file the brief attached hereto.

CONNECTICUT STATE CONFERENCE OF BRANCHES OF THE NAACP, CONNECTICUT CIVIL LIBERTIES UNION, CONNECTICUT COUNCIL OF CHURCHES, CONNECTICUT JEWISH COMMUNITY RELATIONS COUNCIL, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, RITA JOHNSON, ROBERT S. EARLEY, DONALD L. WASSMAN, LAURA WILEY HANSEN, WILLIAM MANCHESTER AND EDGAR W. DAVIS,

By .....

Peter L. Costas
Paul W. Orth
Their Attorneys

IN THE

Supreme Court of the United States

October Term, 1970

No. 89

ALTON J. LEMON, *et al.*,
Plaintiffs-Appellants,

—VS.—

DAVID H. KURTZMAN, *et al.*,
Defendants-Appellees.

No. 153

ELEANOR TAFT TILTON, *et al.*,
Plaintiffs-Appellants,

—VS.—

ELLIOT RICHARDSON, *et al.*,
Defendants-Appellees.

No. 569

JOHN R. EARLEY, *et al.*,
Defendant-Appellants,

—VS.—

JOAN DICENSO, *et al.*,
Plaintiffs-Appellees.

No. 570

WILLIAM P. ROBINSON, *et al.*,
Defendants-Appellants,

—VS.—

JOAN DICENSO, *et al.*,
Plaintiffs-Appellees.

ON APPEAL FROM THREE-JUDGE UNITED STATES DISTRICT COURT RESPECTIVELY FOR THE EASTERN DISTRICT OF PENNSYLVANIA, THE DISTRICT OF CONNECTICUT, THE DISTRICT OF RHODE ISLAND AND THE DISTRICT OF RHODE ISLAND

BRIEF OF

CONNECTICUT STATE CONFERENCE OF BRANCHES OF THE NAACP, CONNECTICUT CIVIL LIBERTIES UNION, CONNECTICUT COUNCIL OF CHURCHES, CONNECTICUT JEWISH COMMUNITY RELATIONS COUNCIL, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, RITA JOHNSON, ROBERT S. EARLEY, DONALD L. WASSMAN, LAURA WILEY HANSEN, WILLIAM MANCHESTER AND EDGAR W. DAVIS, *AMICI CURIAE*

1. *Interest of the Amici*

The *amici* are organizations concerned with the Fourteenth and First Amendments to the Constitution, Black and white parents of children in the public schools, a public school administrator and taxpayers. They are the original parties Plaintiff in *Johnson et al.* v. *Sanders et al.*, Civil Action No. 13,432, in which on November 19, 1970, a three-judge District Court for the District of Connecticut adjudged and decreed that 1969 Public Act 791 (now Connecticut General Statute Section 10-281 a-v, entitled "Nonpublic Schools Secular Education Act") is unconstitutional in its entirety, and that Defendant state officials are enjoined from contracting with or reimbursing nonpublic schools for the purpose of secular education services pursuant to such Act (—— F. Supp. ——). Previously a motion to dismiss had been granted as to the organizational Plaintiffs due to lack of standing. Although the statute was attacked as unconstitutional on both First and Fourteenth Amendment grounds, the Court's decision of unconstitutionality is based only on the Establishment Clause ground. Nevertheless, the Court saw fit to comment on the Fourteenth Amendment ground, as is set forth hereinafter.

Connecticut's statutory scheme for aiding sectarian elementary and secondary schools has significant differences

from the statutes involved in the above-captioned cases, but the basic First Amendment questions in *Johnson* are similar. In *Johnson* there was developed a significant record and legal position to support the Fourteenth Amendment claims made explicitly in *Lemon* and implicitly in the other above-captioned cases. We are cognizant that any decision adverse to Plaintiffs made in the captioned cases would adversely affect our position in *Johnson*. We are concerned that this Court does not presently have before it a reasonably completely developed picture of the facts regarding nonpublic school education and the applicable law. It is particularly the facts and the laws regarding nonpublic school education which gravely bear upon any First Amendment resolution which Plaintiffs deem vital to bring to the attention of this Court in its consideration of these cases.

Those of us who are the present Plaintiffs in *Johnson* are a number of Connecticut residents and taxpayers including two Black parents of children and one white parent in public schools, a superintendent of a public school system. Those of us which are organizations were among the original Plaintiffs, and we all share as common objectives the separation of Church and State and the opposition to the use of public funds for the support in whole or in part of any nonpublic schools, whether sectarian or not, whose policies and practices, by purpose or effect, exclude or otherwise discriminate against persons by reason of race, economic status, or religion.

We seek to present a clear picture of what may happen to our public schools if tax aid to sectarian schools is to be found constitutionally permissible. Government will contribute to the demise of a pluralistic school system and accelerate the growth of separate and unequal school sys-

tems—a public school system predominantly black, poor and inadequate and a nonpublic school system predominantly white, affluent and superior.

The picture in Connecticut may be regarded as reasonably representative of nonpublic school education throughout at least a major portion of the United States. *Johnson* alone presents a fully developed record on the racial effect of aid to private schools. We can readily show the clear interrelationship of the Fourteenth Amendment to the First Amendment and we can support the standing of Plaintiffs in *Lemon* to raise the issue of equal protection. A decision with respect to the First Amendment claim in each of the captioned cases will clearly affect our position as will an adverse decision on the issue of standing in *Lemon*.

2. *The Nature of the Actions*

Lemon is a suit challenging the constitutionality, on its face and as applied, of a law enacted by the Commonwealth of Pennsylvania in 1968 providing for the purchase by the Commonwealth of services of teachers in nonpublic schools. Those teachers whose services are purchased are those teaching certain secular subjects. The Pennsylvania statute contains no provisions requiring the admission of all prospective students, or any provisions forbidding discriminatory enrollment practices. The Plaintiffs include taxpayers and residents of the Commonwealth and a Black parent of a child attending a public school. The complaint asserts that the Statute is unconstitutional in that it violates (1) The Establishment Clause of the First Amendment; (2) The Free Exercise Clause of the First Amendment; and (3) The Equal Protection Clause of the Fourteenth Amendment. Motions to dismiss the complaint were granted on the grounds that the complaint failed to state a claim upon which relief could be granted and that none

of the Plaintiffs had standing to assert the Equal Protection claim.

Tilton is a suit challenging the constitutionality, as applied or on its face if properly applied, of the Higher Education Facilities Act enacted by Congress in 1963 to provide grants for construction of facilities and purchase of equipment at institutions of higher education, both public and nonpublic. The only institutions clearly excluded from eligibility are schools of divinity, and the facilities clearly excluded are those for instruction in religious subjects or for religious worship and dormitories. The Plaintiffs include faculty members in non-sectarian institutions of higher learning which would have received grants had allocated funds not been exhausted by grants to named defendant sectarian colleges. The complaint alleges, *inter alia*, that the named defendant sectarian colleges siphon funds away from non-sectarian colleges which are open to enrollment of persons of all races and of all religions, and that grants to sectarian institutions violate the Free Exercise and Establishment Clauses of the First Amendment. After trial, the three-judge District Court found the Act constitutional as having a primary purpose and effect which was permissible.

The *DiCenso* cases involve the challenge of a Rhode Island law enacted in 1969 providing for the supplementing of salaries of teachers in nonpublic schools. The Rhode Island statute contains no provision requiring the admission of all prospective students or any provision forbidding discriminatory enrollment practices in the schools in which are located the teachers whose salaries are supplemented. The Plaintiffs include taxpayers and parents of children in the public schools. The complaint alleges that the statute is unconstitutional in that it violates the Establishment and

Free Exercise Clauses of the First Amendment. After trial, the three-judge District Court unanimously found the statute unconstitutional as violating the Establishment Clause of the First Amendment.

3. *Questions to Which This Brief Is Addressed*

We will discuss only the following questions relating to the Fourteenth Amendment:

Whether tax support of nonpublic schools violates the Establishment Clause of the Fourteenth Amendment.

Whether taxpayers and parents have standing to present a claim of unconstitutionality under the Fourteenth Amendment without previously having been denied admission of a child to a nonpublic school.

ARGUMENT

Summary of Argument

As will be developed more fully hereinafter, aid to nonpublic schools presents a significant constitutional problem in that it involves the government in the funding of institutions which are nonpublic because they wish to establish their own criteria for operation and admission. By purpose or by effect, such nonpublic schools can be characterized as clearly imbalanced from the standpoint of minority groups, from the standpoint of the economically disadvantaged, and from the standpoint of the educationally disadvantaged. They generally require the payment of tuition and they frequently are to be found in greatest concentration in the middle class white areas. It is not the intent of the *amici* to characterize all nonpublic schools as having an intent to discriminate; but intent is not the question when the effect is so clear.

If government channels its tax funds to maintain and support nonpublic schools which are contributing to racial and economic imbalance in the public schools, it can be expected that further deterioration of the public schools system will occur. Certainly, we have seen the flight of the middle class children from public to nonpublic schools not only in the south but throughout the north. Should government be authorized to contravene the very decisions of this Court regarding the need to develop one pluralistic, equal, open school system for all children, regardless of race, creed, economic status or intellectual ability?

The involvement of government in the funding of such nonpublic schools must be considered state action. That involvement is too intense to say that by funding government does not participate in the improper effect of those schools.

Lastly, it is submitted that any taxpayer, and certainly any parent of a child in the public school system, has standing to press the Fourteenth Amendment claim. The effect of discriminatory enrollment and racial imbalance in the public schools is all too well known. Any Negro parent of a child in a public school system has great reason to be concerned with government action supporting schools which contribute to the racial imbalance of the public schools.

PART I

The Fourteenth Amendment Issue

We submit that any act of Congress or of a state or of a municipality which funds a nonpublic school which by design or effect has discriminatory enrollment practices violates the Equal Protection Clause of the Fourteenth Amendment. Tax support of such schools constitutes "state action" in such discriminatory practices and effects. Neither a state nor Congress can fail to recognize the generally accepted structure of nonpublic schools, particularly those of sectarian character, as being selective or unattractive, and thereby discriminatory, in effect or design, with regard to students of economically disadvantaged, ethnically or religiously or racially distinct backgrounds.

Although nonpublic schools do have a role in education in the United States, can it be doubted that their nonpublic character can destroy their ability to serve the overriding public purpose of supporting institutions designed to provide an education for living in a pluralistic society and to provide equal opportunity for all regardless of race, religion or economic means?

For good reason, the pluralistic society which inhabits this country saw fit to create a strong public school system which is controlled by *all* of the public.[1] That school system clearly must be open to all students equally under the Fourteenth Amendment and it may not provide "separate" facilities for children of different groups.[2] Children of the poor as well as the rich are entitled to the same programs and facilities in such schools. They are governed

[1] *Kramer* v. *Union Free School District*, 395 U.S. 621 (1969).

[2] *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

by the will of *all* the people, even those whose children may be enrolled in nonpublic schools.

Thus, the public school system is the bulwark of training for children to live in a pluralistic society. It is subject to many shortcomings, but these shortcomings are amenable to control, criticism, scrutiny and change by any citizen through the elective process and through diligent effort because such schools are *public*.

The Nature of Nonpublic Schools

In *Lemon*, no real record was permitted to be established since a motion to dismiss was granted before answer was filed. Nevertheless, counsel for Lemon *et al.* has provided in his brief at pages 49-54 some information concerning the enrollment situation in Pennsylvania.

In *Johnson*, the *amici* were more fortunate in having access to many documents of the State of Connecticut relating to enrollment of minority groups and the disadvantaged in public and nonpublic schools. The Archdiocese of Hartford had provided the Education Committee of the Connecticut Legislature with its minority enrollment statistics. The Connecticut Association of Independent Schools which appeared *amicus curiae* in *Johnson* also provided information on minority group enrollment in its member schools. All of this data has been submitted as appendices to the motion of the plaintiffs in the above entitled cases to postpone oral argument therein until *Johnson* can be readied for argument concurrently.

It is submitted that the data developed in *Johnson* are reasonably representative of nonpublic school education, and of the imbalance between public and nonpublic schools,

throughout at least a major portion of the United States. To facilitate consideration by this Court, Appendices J-R and Exhibits 8 and 14 have been reproduced as appendices hereto under the *Johnson* designation.

These documents establish that in Connecticut as in Pennsylvania:[3]

> The nonpublic school system is essentially a white school system.
>
> The private non-church-related schools are white schools which have accepted a few Black students.
>
> The Roman Catholic school system has a larger percentage of Black students, but it is essentially segregated with the high Black enrollment being present in a few urban center schools.[4]

In addition, the *Johnson* documents clearly show:

> The economically disadvantaged are overwhelmingly loaded into the public school system.
>
> The sectarian schools have relatively few students of other than the sponsoring religion.

As seen in Appendix J, 84.1 percent of the total enrollment of elementary and secondary school students in Connecticut is in the public school system. Nonpublic schools seeking assistance under the Connecticut Act contain 11.9 percent of the total student enrollment for the state. Of this 11.9 percent of total student enrollment, 87.81 percent were in sectarian schools.

As seen in Appendix K, of the denominational schools applying for aid under the Connecticut Act, 29.5 percent

---

[3] Brief for *Lemon et al.*, pp. 49-50.

[4] Many of these schools were selected to be closed by the Archdiocese according to newspaper reports.

has *no* students of any other religious denomination; 35.9 percent had 0-2 percent of their enrollment comprised of students of other religious denominations; 21.2 percent had 2-5 percent comprised by such students; 7.4 percent had 5-10 percent; and 5.5 percent had more than 10 percent.

Turning to the students considered economically disadvantaged, Appendix L shows that economically disadvantaged students comprised only 5.1 percent of the enrollment in the applicant schools in Connecticut. Almost 39 percent of those schools had *no* students who were educationally disadvantaged; 16.6 percent had 0-2 percent of their enrollment comprised of such students; 15.4 percent had 2-5 percent; 13-1 had between 5-10 percent; and only 17 percent had over 10 percent. Appendix M shows the glaring disparity of such enrollment between the public and nonpublic schools in the larger towns.

As seen in Appendix Q, the disparity in enrollment of minority groups between parochial and public schools is overwhelming. Although 16.6 percent of the total student enrollment in the City of Hartford is to be found in the nonpublic schools, 12,411 Blacks or 97.7 percent of all Black students are to be found in the public schools while only 286 or 2.3 percent are in the parochial schools. This is a disparity of 5:1 in the nonpublic schools.[5] In Meriden, 18.1 percent of the student enrollment is in the private schools; all 403 Black students are in the public schools. In New Britain, the nonpublic schools have 18.4 percent of the total students but only 2.7 percent of the Black students. As can be seen from Appendix G to the *Johnson* case accompanying the motion to postpone argument, in many towns there is absolutely no minority enrollment in

[5] As previously indicated, some of these parochial schools containing larger numbers of Blacks are slated to be closed.

parochial schools despite substantial minority group enrollment in the public schools as seen in Appendix F accompanying the motion.

As to the nature of the nonpublic schools in the various states, Appendix R would appear reasonably representative. Of the 379 nonpublic schools with a total enrollment of 125,366 students, 98 schools were nondenominational with a total enrollment of 22,861; 264 schools were Roman Catholic with a total enrollment of 100,262; and 17 schools were affiliated with other religions and had a total enrollment of 2,243.

Nonpublic schools are inherently discriminatory in their enrollment practices and effect. They charge tuition; usually charge extra amounts for books, special equipment and services; often require the wearing of uniforms or specified types of clothing; most usually require certain minimum academic standards for admission; and are located to a large extent in areas which require transportation to, or boarding at, the school in order to attend classes. As a result, such schools obviously are not open to *all* students regardless of race or religion, or financial means even assuming "an open enrollment policy."

Admittedly, some private schools provide tuition assistance to a small percentage of the student body and in some schools the tuition may be small. Nevertheless, the direct and related costs of attending such nonpublic schools effectively deny attendance to potential students from families of limited financial means. Overcoming this financial impediment would require the State to provide far more assistance and incur far greater costs of education in a separate private school system than in the public schools system—certainly this is not likely. Thus, the direct costs

are the first step in ensuring discriminatory enrollment practices.

The Court may also readily ascertain that many (and preferably most) of the nonpublic schools are located outside the areas of the ghetto or financially deprived community. Accessibility of such schools to students is limited unless the parents can afford the costs of transportation and are willing to send their children to remote schools. To overcome this financial impediment, the State must bus the students at its expense to private schools, further increasing the costs of maintaining the private school system —bus service as state expense to all private schools anywhere in the State of Connecticut is most unlikely.

The Court may also recognize that most of the private schools have established certain minimum academic criteria for admission or enrollment. Students who do not meet these criteria are either not admitted or asked to leave the school. In contrast, the public school system sets no minimum academic criteria and is in fact required to provide for students of *all* levels of intellectual capacity. Moreover, many, if not most, private schools cater to persons of certain socio-economic backgrounds and their atmosphere is such as to render uncomfortable those persons who do not fit the established background of the school.

Lastly, most of the nonpublic schools in the United States are religiously affiliated or sectarian schools catering to children of a particular religious persuasion and providing sectarian educational programs in addition to instruction in "secular subjects". This is the avowed purpose for their existence and support by members of that religious persuasion. Many parents may not wish their children indoctrinated to a religion other than their own

(or to any religion) either by direct action or by the subtleties of religious symbols, religious garb, prayers, etc. As a result, students of other religious persuasions or of no religious persuasion obviously are discouraged from seeking enrollment in such institutions.

Any program of governmental aid to nonpublic schools must be considered on the basis of the nature of those schools. We submit that nonpublic schools, by effect or design, are predominantly white, middle class and selective, and that public schools are disproportionately comprised of the minority groups, the poor and the educationally disadvantaged.

The Educational Purpose of the Nonpublic Schools Does Not Balance the Enrollment Imbalance Effect

Dicta in decision of this Court in *Board of Education* v. *Allen,* 392 U.S. 236, have been argued to support aid to nonpublic schools as being appropriate to warrant a test wherein a balancing of public interest is made. Even under such a "test", the public purpose is not served because education is available and open to *all* students in the public schools and because nonpublic schools inherently or by design exclude economically disadvantaged persons, minority groups and students of other religions. The resulting imbalance and the further growth of separate but unequal school systems is not in the public interest and certainly not to be encouraged by tax support.

The legislative draftsman of the Connecticut Act recognized the facts of the situation and the inherent susceptibility to attack of state funding of nonpublic schools because of their enrollment characteristics. He attempted to justify the public interest by including a provision re-

quiring the nonpublic schools to adopt an "open enrollment" policy.[6]

However, even the "open enrollment" policy of the Connecticut Act is only illusory since it contemplates that the "offer" of enrollment shall be sufficient. The regulations of the State of Connecticut[7] adopted pursuant to the Act further evidence the state's recognition of the inherent discriminatory patterns in nonpublic schools[8] and an attempt to balance the state's support by requiring the offer of "open enrollment."

Accordingly, the Connecticut Act *on its face* first recognizes that the nonpublic institutions may have discriminatory enrollment practices giving preference to members of the parish or regular contributors and condones such

---

[6] Section 12(d) of the Act states in part:

"The school shall have a policy of open enrollment for all qualified students meeting its academic and other reasonable admission requirements without regard to race, religion, creed, or national origin as follows: *A nonpublic school, which is financially supported by regular contributions made by parishioners or other supporters independent of their children's attendance at the school, may give a preference in admission to children of such parishioners or contributors.* However, said school shall admit each year after the effective date of this act all qualified applicants meeting its academic and other reasonable admission requirements, without any preference given to children of parishioners or contributors, in that number which bears the same proportion to the total number of students admitted as the amount reimbursable to said nonpublic school under this act in the school year prior to the year of admission bears to the total cost of operating that school in that year. . . ." [Emphasis Added]

[7] Section 3(h) of the Connecticut Act states:

"'Open enrollment' means *the offer* by a school of the opportunity of admission *to any qualified student meeting its academic and other reasonable admission requirements,* to the extent required by this act, without regard for race, religion, creed or national origin." [Emphasis Added]

[8] Appendix E, submitted with the Motion to Postpone Argument, Sec. 10-281n-7.

practices; then it requires only that the institution announce an "open enrollment" policy. Then, it allows the institution to establish *as a requirement for admission* academic and other "reasonable" admission requirements. Is the Fourteenth Amendment any less applicable to educationally deprived students who may not meet the "academic standards" of the nonpublic school? Is it any less applicable to poor children who cannot meet the tuition requirements of the nonpublic school? Is it any less applicable to children who would be discomforted by the prevailing religious or "social" atmosphere of some nonpublic schools? Is it any less applicable to children who do not meet other "reasonable" requirements of the nonpublic school?

It is submitted that the permission of impermissible conduct in excluding by design or effect of students who are economically deprived, who are of other religions or who do not meet "reasonable" admission requirements violates the absolute prohibitions of the Fourteenth Amendment and constitutes improper state action:

> "No State shall make or enforce any law which shall... deny to any person within its jurisdiction the equal protection of the law."

The Entire Pattern of State Involvement in the Operation of the Nonpublic Schools Establishes Their Discriminatory Practices as State Action

It has been contended that government involvement in the operation of the nonpublic schools does not constitute state action. Interestingly, the basis for seeking state support was that the nonpublic schools were performing a

public function, i.e., that of providing an education which is required of all children in the state between some specified ages, and that the state is required to provide such an education to all children. Primary and secondary education is a state function required of the state (or its towns). In some states, a university education is to be provided by the state.

An institution " . . . takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matter of private law because they are performed by a [private] party." *Smith* v. *Allwright*, 321 U.S. 649, 663 (1944). The state governments require an education and require the municipality to provide such an education by the maintenance of public schools. Generally, the parent is required to enroll his child in a public school unless he is able to show that the child is elsewhere receiving equivalent instruction to the studies taught in the public schools.[9] Generally, the penalty is provided for failure of the parent to comply.[10] In many states such as Connecticut, deprivation to a student by a town of public schooling can result in forfeiture of state support.[11]

Generally, the nonpublic school can provide this educational function and relieve the parent of the requirement that he enroll his child in the public schools unless the nonpublic schools are found by the state to provide equivalent instruction in the studies taught in the public schools.[12] This clearly establishes the power of the state to close down, at least to Connecticut students, any nonpublic

[9] See for example Conn. General Statutes §10-184.

[10] See for example Conn. General Statutes §10-185.

[11] See for example Conn. General Statutes §10-186.

[12] See for example Conn. General Statutes §10-184.

schools of which it does not approve by denying that school to parents as an alternative to the public schools to which they are required to send their children. In most, if not all states, the state is directly and omnipotently involved in the acts of the nonpublic schools by the granting of approval to nonpublic schools practicing discriminatory enrollment practices. There can be no doubt that the state is "significantly involved" in that discrimination contrary to the provisions of the Fourteenth Amendment.

The state thus has through its body of laws elected to ". . . place its power, property and prestige behind the institution." *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 725 (1961). In at least some states, they provide nonpublic schools with health and welfare services of professional personnel, such as doctors, nurses, psychologists and social workers.[13] The federal government and at least some states provide significant financial support through the granting of aid to nonpublic schools for programs directed to "disadvantaged children".[14] Some states provide motor vehicle courses for all students.[15]

The state may require that all public and nonpublic schools teach in the English language;[16] and that they teach a course of instruction in the duties and responsibilities of United States citizenship.[17] The state may require clean and sanitary practices in each schoolhouse and for inspec-

---

[13] See for example Conn. General Statutes §10-217a.

[14] Congress has enacted The Elementary and Secondary Education Act of 1965, PL 89-10. As to a state act, see for example Conn. General Statutes §10-266a.

[15] See for example Conn. General Statutes §10-24.

[16] See for example Conn. General Statutes §10-16.

[17] See for example Conn. General Statutes §10-18.

tion by the State Board of Education or local Board of Education.[18] The state may permit a community to have a referendum and then to pay for busing of students to nonpublic schools.[19] The state may require appliances and devices for eyeprotection in laboratories and workshops of all public and private schools.[20]

In other instances, the state involvement in the operation and support of the nonpublic schools may be covert such as the elimination of private school vehicles from the statutory definition of motor vehicles[21] and attendant exemptions from State requirements for such vehicles. However, in every instance, there is still State support and involvement in the operation of nonpublic schools.

Clearly there can be no question that the entire pattern of involvement of government in the operation and support of nonpublic schools establishes such schools as instrumentalities of State action. As such, discrimination by such state-supported nonpublic schools is not purely private discrimination since there is the requisite nexus between the State and the nonpublic schools to create a Fourteenth Amendment violation. To have government so deeply involved in the control and support of such institutions and then to deny the application of the Fourteenth Amendment on the grounds that such institutions are not instrumentalities of the government is pure institutionalized hypocrisy in an arbitrary distinction in the application of the powers of the state.

---

[18] See for example Conn. General Statutes §10-203.

[19] See for example Conn. General Statutes §10-281.

[20] See for example Conn. General Statutes §10-214a.

[21] See for example Conn. General Statutes §16-324.

The nonpublic schools are not purely private. The rationale behind acts to provide financial assistance is that they perform public functions and that they are public instrumentalities; therefore they must meet state standards of protection against discriminatory practices not only to the extent of state support but to the fullest extent since they seek and obtain governmental assistance. Government should not be allowed to circumvent its duty to refrain from active violation of the Fourteenth Amendment, and in fact to seek an end to all violation thereof, by "merely" maintaining and encouraging the growth of nonpublic schools.

Financial Support of Institutions With Discriminatory Enrollment Patterns Is Prohibited State Action

In *Burton* v. *Wilmington Parking Authority,* this Court dealt with a parking garage and stated:

> "Only by shifting facts and weighing circumstances can the non-obvious involvement of the state in private conduct be attributed its true significance.
>
> " . . . no state may effectively abdicate its responsibilities by either ignoring or by merely failing to discharge them; whatever the motive may be it is no consolation to the individual denied equal protection of the laws that it was done in good faith" (at page 725).

Certainly, the role of the State in expressly recognizing and condoning discriminatory enrollment practices and in permitting the imposition of academic and other reasonable academic standards is no less a non-obvious involvement.

The role of government in enacting nonpublic school aid statutes and in supporting such institutions can be readily compared with the action of the State of California in passing a constitutional amendment which would have permitted private persons to discriminate in their real estate transactions, *Reitman* v. *Mulkey.*

Can there be any question that the State's involvement in, and condoning of, discriminatory enrollment practices is any less objectionable than that State action found improper in *Poindexter et al.* v. *Louisiana Financial Assistance Commission et al.,* 258 F. Supp. 158, 164 (E.D. La. 1966) wherein the Court stated:

> "A segregated school predominantly supported by state funds is a *fortiori* case of unconstitutional state action. But any amount of state support to help found segregated schools or to help maintain such schools is sufficient to give standing to Negro school children to file the kind of complaint filed in this case."

Of similar import and effect is *Coffey et al.* v. *State Educational Finance Commission et al.,* 269 F. Supp. 1389 (S.D. Miss. 1969):

> "The statute, as amended, encourages, facilitates, and supports the establishment of a racially segregated basis as an alternative available to white students seeking to avoid desegregated public schools."
>
> • • • • •
>
> "There is no claim in this case that the constitution requires all children to attend public schools, or that a private citizen may not select a private segregated school for his child because of the desire to keep the child from being educated with children of a different

> race. What is involved here are legislative enactments which 'will significantly encourage and involve the State in private discriminations.'" *Reitman* v. *Mulkey*, 387 U.S. 369, 381, 87 S. Ct. 1627, 1634, 19 L. Ed.2d 830, 838 (1967) (p. 1392).

In *Cooper* v. *Aaron*, 358 U.S. 1 (1958) this Court struck down efforts to delay implementation of plans for desegregating schools and held that the local school boards and superintendents of schools stood as agents of the State:

> "The controlling legal principles are plain. The command of the Fourteenth Amendment is that no 'State' shall deny to any person within its jurisdiction the equal protection of the laws. 'A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government * * * denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning.' Ex parte Virginia, 100 U.S. 339, 347, 25 L. Ed. 676. Thus, the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see Virginia v. Rives, 100 U.S. 313, 25 L. Ed. 667; Com. of Pennsylvania v. Board of Directors of City Trusts of Philadelphia, 353 U.S. 230, 77 S. Ct. 806;

L. Ed.2d 792; Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161; or whatever the guise in which it is taken, see Derrington v. Plummer, 5 Cir., 240 F.2d 922; Department of Conservation and Development v. Tate, 4 Cir., 231 F.2d 615. In short, the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.' Smith v. Texas, 311 U.S. 128, 132, 61 S. Ct. 164, 166, 85 L. Ed. 84."

Can there be any doubt at this point that the government has chosen to use the nonpublic schools as an instrumentality for conducting the program and purpose of education? Can there be any doubt that the government has become significantly involved in statutorily recognizing and condoning the discriminatory enrollment policy or effect of nonpublic schools which it funds to a substantial degree and which it controls and supervises to a substantial degree?

The Facts Establish That Governmental Aid to Nonpublic Schools Constitutes a Violation of the Fourteenth Amendment

There can be no doubt that the state aid statutes for nonpublic schools were enacted to support nonpublic schools and that such schools were known and recognized to have discriminatory enrollment patterns or practices. Moreover, it should be noted that the Fourteenth Amendment is not

limited to "race or religion"—the Fourteenth Amendment is absolute:

> "No State shall make any or enforce any law which shall . . . deny to *any person* within its jurisdiction the equal protection of the law."

Every child is entitled to a primary and secondary education at State expense in institutions which are open for admission to *all persons* without respect to any criteria for admission except as to residence and as to conduct which would justify expulsion. Is a poor person any less a person to be protected by the Fourteenth Amendment? Is a person with an academic level less than "reasonable academic standard" a person who should not be protected by the Fourteenth Amendment? Thus, state aid to nonpublic schools opens up a field of discriminatory effects for a new group of second class citizens.

We have pointed out the character of the nonpublic schools throughout the State of Connecticut. From the information set forth hereinbefore, the overall pattern of discriminatory enrollment in nonpublic schools is quite evident. Economically disadvantaged students are by far crowded into the public schools. The sectarian schools have relatively few students other than the sponsoring religion.

This Court recognized the invidious activity that could result from state support of private schools in *Cooper* v. *Aaron* at page 19:

> "State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws. The right of a student

not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of law."

Since the enunciation in *Brown* v. *Board of Education* that separate educational facilities are inherently unequal, a number of cases have enunciated the requirement that the state take positive action to end *de facto* segregation.[22] The state's obligation is to strengthen the public school system which is open to all students—not to fund and support institutions which have, by effect or design, discriminatory enrollment practices. Such conduct is clearly violative of the Fourteenth Amendment.

PART II

The Issue of Standing to Sue

We submit that the Plaintiffs in *Lemon*, we as Plaintiffs in *Johnson* and, in fact, the taxpayers and parents in *Tilton* and *Di Censo* have standing to present a claim for violation of the Equal Protection Clause of the Fourteenth Amendment. The decision of this Court in *Flast* v. *Cohen*, 392 U.S. 83 (1968) made clear that citizens should not be deprived of the right to present Constitutional attacks upon legislative acts. We submit that the District Court in *Lemon* (and the District Court in *Johnson*[23]) erred in find-

[22] E.g., *Block* v. *Board of Education*, 226 F. Supp. 208 (E.D. N.Y. 1964); *Branch* v. *Board of Education*, 204 F. Supp. 150 (E.D.N.Y. 1962); *Hobson* v. *Hanson*, 269 F. Supp. 401 (D.C. D.C. 1967), affirmed and modified 408 F.2d 175 (1969), appeal dismissed 392 U.S. 801 (1969).

[23] The decision of the Court is of interest at page 25 of the Slip Opinion:

Under the circumstances we are constrained to hold that none of the plaintiffs has standing to raise the Equal Pro-

ing that the Plaintiffs lacked standing to present Fourteenth Amendment issues in the absence of having a child refused admission to a private school aided under the Act.

Any Negro Parent of a Child in the Public Schools Has Standing

Alton Lemon in *Lemon* clearly is a Negro parent of a child in the public school system. As such, he is vitally interested in the viability of that system and he is vitally interested in preventing that system from becoming segregated through flight of white middle class children to the nonpublic schools. The manner in which this harm affects a Negro parent is readily demonstrable.

The *amici* Robert S. Early and Rita Johnson are similarly situated and had the opportunity to file affidavits on this issue in *Johnson* (appended hereto respectively as Appendices N and P). As cogently stated therein, a Negro parent of children in the public school system is injured by the fact that tax aid to nonpublic schools siphons off significant financial support to the public school system in which his child is enrolled, thereby rendering it less effective than it might otherwise become if fully funded.

Providing tax support for nonpublic schools with restrictive enrollment practices or requirements which produce

---

tection issue. If one of them had been the parent of a Negro child who, though otherwise qualified, had been denied admission to a secular class, purchased by the State, at a contracting school because the "open" enrollment quota was filled, there would have been a clear-cut collision of interests and we would have been presented with an Equal Protection question, the nature of which is disclosed in the evidentiary material supporting the plaintiffs' motion for summary judgment. For the most part the attack is directed at the admissions provisions contained in §12 of Public Act 791.

atypical enrollment presently injures the public school system and will injure it even more severely as time progresses. The disproportionate enrollment of minority group students in urban schools has produced a marked tendency for white middle class parents to enroll their children in nonpublic schools or to move to suburban communities. This, in turn, produces a snowballing reaction in that the school system suffers as balance and widespread community support and interest are destroyed, causing further flight of the white middle class (and indeed some of the Black middle class) from the public school system. This imbalance cannot help but promote and aggravate imbalance in the public schools which his child attends and reduce the opportunity for his child to obtain the best possible education in a pluralistic environment.

A Black parent is further aggrieved by the requirement that he pay taxes directly or indirectly for the support of nonpublic institutions having such enrollment imbalance and as to which he has no effective voice. In contrast to the public school system which has a board of education which a Black parent directly or indirectly elects and which is partially responsible to the officials which he elects and to which he may direct his grievances and of which he can attend meetings, the nonpublic schools are truly nonpublic. A Black parent has no voice in their operation, no control over their actions, and no way to challenge their practices except by the present actions when they seek and obtain substantial governmental aid.

In the urban communities, it will be shown hereinafter that there is great imbalance of minority group and economically deprived students between the public and nonpublic schools. The disproportionate enrollment is the result of white middle class parents who withdraw their

children from the public schools to move them to nonpublic schools or who move their families to suburban communities. As a result, broad based community support for the urban public schools is weakened and the effect is one which snowballs as public confidence is further destroyed and as a racial imbalance begins to pyramid.

The insidious effect of discriminatory enrollment in the nonpublic schools does not require denial of admission to the children of a plaintiff or denial of employment to a plaintiff to provide him with standing to challenge an act providing tax funds to such an institution. It is enough that there is demonstrable injury or likelihood of injury to the public schools in which their children are enrolled. It is enough that there is a failure to educate in accordance with the needs of a pluralistic society in a system which fosters integration and universal social concepts. It is enough that government certainly destroys the great opportunity of government to promote racial and minority group understanding. These points are stressed by Edgar W. Davis, a person long associated with the cause of public education here in the United States, who submitted an affidavit in *Johnson* on the issue which is appended hereto as Appendix O.[24]

There can be little doubt that any Congressional or State act violates the Fourteenth Amendment by supporting in-

[24] As stated therein, tax support for nonpublic schools siphons off funds sorely needed by public schools and will contribute to the deterioration of confidence therein. To his own knowledge, nonpublic schools are selective in admission and impose tuition and other costs which are prohibitive to economically deprived persons. Since the public school system is charged with, and tends to foster integration and universal social concepts, producing an imbalance on religious, ethnic, racial or academic bases would materially impair efforts of the public school system and of the public generally to improve social balance and universal social awareness and justice.

stitutions which do not serve the needs of the entire public and which are not open to all persons. The result of any such act is an increase in the likelihood of two school systems—a public school system predominantly poor, inadequate and imbalanced by the number of economically disadvantaged, academically disadvantaged and minority students; and a nonpublic school system predominantly white, affluent and academically selective.[25]

Must a parent do that which offends his conscience in order to obtain standing to challenge a law using his tax funds for an unconstitutional purpose? As pointed out by the *amici* Johnson and Early in their affidavits, they have not attempted to enroll their children in a nonpublic school because they are committed to an educational system which is open to all and which strives to maintain a multiethnic character and approach to the problems of education and community development. In contrast, they strongly believe that the nonpublic schools are racially and otherwise segregated either by religious or other requirements, or by residential patterns. They strongly believe that the student body of most nonpublic schools includes a disproportionate number of students from relatively affluent and Caucasian backgrounds relative to the number of students from financially and educationally deprived Black and Puerto Rican backgrounds.

Thus, any Black parent of a child in a public school system meets the test of standing most clearly stated in *Flast* v. *Cohen* at pages 102-106. In dealing with a federal taxpayer suit based upon the First Amendment, this Court found that the taxpayers had standing stating:

---

[25] The substance of this language appears in Paragraph 5 of the complaint in *Lemon* and Paragraph 25 of the Complaint in *Johnson*.

"The nexus demanded of federal taxpayers has two aspects to it. First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked.

* * * * *

"Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I § 8. When both nexuses are established, the litigant will have shown a taxpayer's stake in the outcome of the controversy and will be a proper and appropriate party to invoke a federal court's jurisdiction.

* * * * *

"The taxpayer's allegation in such cases would be that his tax money is being extracted and spent in violation of specific constitutional protections against such abuses of legislative power. Such an injury is appropriate for judicial redress, and the taxpayer has established the necessary nexus between his status and the nature of the allegedly unconstitutional action to support his claim of standing to secure judicial review."

In *Lemon* (and in *Johnson*) the Black parent is a taxpayer and can establish that the questions act violates the Fourteenth Amendment and that this violation directly affects him. It is submitted that any parent with children in the public school system will be adversely affected by

State support of nonpublic institutions which inherently develop or practice discriminatory enrollment. All taxpayers are adversely affected who desire the children of this country to attend schools wherein they may be prepared for an adult life in a pluralistic and socially responsible environment determined by a pluralistic public body. Any taxpayer is damaged and aggrieved by being compelled to pay taxes for the support of institutions with discriminatory enrollment practices which he feels unconscionable. Any taxpayer is aggrieved by being compelled to pay taxes for the support of nonpublic institutions as to the operation and policies of which he has no voice. Thus, the plaintiffs in *Lemon* (and in *Johnson*) have established the nexus required for standing.

Moreover, the Court's attention is invited to *Poindexter v. Louisiana Financial Assistance Commission et al.*, 258 F. Supp. 158 (E.D. La. 1966), wherein the Court had no difficulty in establishing the standing of the plaintiffs to challenge the state action involved, although there is no allegation to indicate that any of the plaintiffs or their children were denied admission. Also of interest is the statement of the Court of Appeals for the Second Circuit in *Norwalk Core* v. *Norwalk Redevelopment Agency*, 395 F.2d 920, 927 (1968):

> "The plaintiffs in the case before us are in a very different position. Their stake in the outcome of the case is immediate and personal, and the right which they allege has been violated—the right not to be subjected to racial discrimination in government programs—is one which the courts will protect. Their standing to sue is clear."

We submit that Alton Lemon in *Lemon* (and Robert S. Early and Rita Johnton in *Johnson*) have clear standing to present a claim of unconstitutionality under the Fourteenth Amendment.

Any Taxpayer Should Have Standing to Challenge an Act Siphoning Off His Tax Funds for an Unconstitutional Purpose

It would seem that the decision of this Court in *Flast* v. *Cohen* finally put to rest the ritualistic requirements for standing where a grave constitutional issue is presented and where there is a logical nexus between the taxpayer and the enactment attacked:

> "The taxpayer's allegation in such cases would be that his tax money is being extracted and spent in violation of specific constitutional protections against such abuses of legislative power." [26]

Does a parent have to be Black to be adversely affected by racial imbalance in the public schools? Does a taxpayer have to enjoy the status of having children enrolled in the public schools to be concerned with their viability and their effectiveness in attaining the goals of a pluralistic society?

Any taxpayer is adversely affected when he desires the children of this country to attend schools wherein they may be prepared for an adult life in a pluralistic and socially responsible environment. Any taxpayer is damaged and aggrieved by being compelled to pay taxes for the support of institutions with racial imbalance or discriminatory enrollment practices which he feels are unconscionable. Any

[26] *Id.* at p. 106.

taxpayer is aggrieved by being compelled to pay taxes for the support of nonpublic institutions as to the operation and policies of which he has no voice. Their interest is not remote; the issues are of grave concern to the plaintiffs in *Lemon* (and in *Johnson*) and to citizens throughout the United States. Thus, the taxpayers of *Lemon* (and of *Johnson*) have established the nexus required for standing.

CONCLUSION

The judgments of the District Courts in *Lemon* and *Tilton* should be reversed and the decisions of the District Court in *Di Censo* should be affirmed.

Respectfully submitted,

PETER L. COSTAS
PAUL W. ORTH
Attorneys for Amici Curiae

February 1, 1971

APPENDICES

ENROLMENT STATISTICS

ENROLLMENT STATISTICS

In Public Schools	655,000 or 84.1% of Total Student Enrollment
In All Non-Public Schools	124,000 or 15.9% of Total Student Enrollment
Total Student Enrollment in State	779,000
In Applicant Schools	93,344 (90,188 Conn. residents) or 11.9% of Total Student Enrollment
Breakdown of Applicant Schools	
In Non-Denominational	11,373 or 12.18% of Total Enrollment in Applicant Schools
In Denominational	81,971 or 87.81% of Total Enrollment in Applicant Schools
Roman Catholic	80,954 or 86.72%
Other	1,017 or 1.09%

SECTARIAN APPLICANT SCHOOLS

Total Number of Sectarian Schools	217 or 83.8% of Total Applicant Schools
Total Enrollment in Such Schools	81,971
Students Not of Sponsoring Religion	2,054 or 2.51% of Enrollment in Such Schools

STUDENTS NOT OF SPONSORING RELIGION

As Percentage of Student Body	No. of Schools with Student Percentage	Schools as Percentage of 217 Sectarian Schools
0	64	29.5
0 -2.0	78	35.9
2-5	46	21.2
5-10	16	7.4
over 10	12	5.5

(1 School Not Classifiable)

DISADVANTAGED ENROLLMENT IN APPLICANT SCHOOLS

Total Number of Applicant Schools	**259**
Total Connecticut Resident Enrollment	**90,188**
Enrollment of Educationally Deprived	**4,634** or 5.1% of Total State Enrollment in **Such** Schools

EDUCATIONALLY DEPRIVED STUDENTS

As Percentage of Conn. Students	No. of Schools with Student Percentage	Schools as Percentage of 259 Applicant Schools
0	98	37.8
0 - 2	43	16.6
2 - 5	40	15.4
5 - 10	34	13.1
over 10	44	17.0

DISTRIBUTION OF DISADVANTAGED CHILDREN IN LARGER TOWNS (OVER 10,000 STUDENTS)

(STATE AID TO DISADVANTAGED CHILDREN)

(Figures Based Only Upon Number of Children Receiving Aid to Dependent Children)

Town	Total Number of Students	Percentage Enrollment Public Schools	Private Schools	Total Number of ADC Students	Percentate ADC Enrollment Public	Non-Public
Bridgeport	35,242	71.0	29.0	3,967	92.1	7.9
Bristol	15,251	78.1	21.9	270	95.9	4.1
Danbury	13,468	77.9	22.1	492	96.1	3.9
East Hartford	13,767	91.9	8.1	362	98.9	1.1
Enfield	15,191	86.7	13.3	321	92.5	7.5
Fairfield	15,356	76.4	23.6	132	87.1	12.9
Greenwich	15,575	70.9	29.1	96	93.8	6.2
Groton	10,085	93.0	7.0	193	--	--
Hamden	11,742	83.2	16.8	217	91.2	8.8
Hartford	34,962	82.0	18.0	8,218	96.6	3.4
Manchester	12,207	81.9	18.1	306	92.2	7.8
Meriden	13,533	81.8	18.2	562	95.7	4.3
Milford	14,661	86.6	13.4	320	98.8	1.2
New Britain	18,018	80.7	19.3	1,011	97.5	2.5
New Haven	29,159	74.0	26.0	5,296	94.6	5.4
Norwalk	20,580	85.5	14.5	964	98.9	1.1
Norwich	10,664	57.0	43.0	558	94.4	5.6
Stamford	27,735	75.9	24.1	1,309	99.6	0.4
Stratford	11,549	84.4	15.6	180	94.4	5.6
Wallingford	10,130	88.5	11.5	161	97.5	2.5
Waterbury	25,796	68.6	31.4	1,750	91.1	8.9
West Hartford	17,695	74.0	26.0	66	74.2	25.8
West Haven	12,014	79.2	20.8	487	90.6	9.4

APPENDIX N

Affidavit of Robert S. Early

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil Action No. 13422

CONNECTICUT CIVIL LIBERTIES UNION, *et al.*,

Plaintiffs,

—VS.—

WILLIAM J. SANDERS, Secretary of the State Board of Education of the State of Connecticut, *et al.*,

Defendants.

STATE OF CONNECTICUT,
COUNTY OF , *ss.*

ROBERT S. EARLY, being duly sworn, deposes and says as follows:

1. He is one of the Plaintiffs in the captioned action and resides at 25 Hillside Avenue, Vernon, Connecticut 06086.

2. He is a Black American, a taxpayer of the State of Connecticut and he has one child enrolled in the public schools of Vernon.

3. His conscience is offended by Public Act 791 and he strongly feels that this Act injures him as a taxpayer and injures the public school system in which his child is enrolled and to which he is deeply committed. This Act

siphons off significant financial support from the public school system in which his child is enrolled, thereby rendering it less effective than it might otherwise become if fully funded.

4. By supporting non-public schools with restrictive enrollment practices or requirements which produce atypical enrollment, this Act presently injures the public school system and will injure it even more severely as time progresses. The disproportionate enrollment of minority group students in urban schools has produced a marked tendency for white middle class parents to enroll their children in non-public schools or to move to suburban communities. This, in turn, produces a snowballing reaction in that the school system suffers as balance and widespread community support and interest are destroyed, causing further flight from the public school system.

5. He has not attempted to enroll his child in a non-public school because he is committed to an educational system which is open to all and which strives to maintain a multiethnic character and approach to the problems of education and community development. In contrast, he strongly believes that the non-public schools are racially and otherwise segregated either by religious or other requirements or by residential patterns. He strongly believes that the student body of most non-public schools includes a disproportionate number of students from relatively affluent and caucasian backgrounds relative to the number of students from financially and educationally deprived black and Puerto Rican backgrounds based upon the urban areas in which they relocated. This imbalance cannot help but promote and aggravate imbalance in the public schools which his child attends and reduce the opportunity for his child to obtain the best possible education in a pluralistic environment.

6. He is grievously concerned over the lack of understanding of racial and economic problems faced by minority groups in this country. He firmly believes that non-public schools do little if anything to create an understanding and awareness of the problems of the minority groups and thereby fail to improve the lot of his race or of other minorities.

7. He is further aggrieved by the requirement that he pay taxes for the support of institutions following such discriminatory practices and as to which he has no effective voice. In contrast to the public school system which has a board of education which he elects and which is partially responsible to the Mayor and Board of Representatives which he elects and to which he may direct his grievances and of which he can attend meetings, the non-public schools are truly non-public. He has no voice in their operation, no control over their actions, and no way to challenge their practices except by the present action when they seek and obtain substantial state aid.

8. He reaffirms all of the allegations of Paragraph 18-26 of the complaint herein as being true to the best of his knowledge and believes they provide the basis upon which he feels he is aggrieved under the Fourteenth Amendment to the United States Constitution.

/s/ Robert S. Early
Robert S. Early

Sworn and subscribed to before me this 23rd day of June, 1970.

/s/ Elizabeth L. Bellinger
Notary Public

My Commission Expires Mar. 31, 1974

APPENDIX

Affidavit of Edgar W. Davis

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil Action No. 13432

CONNECTICUT CIVIL LIBERTIES UNION, *et al.*,

Plaintiffs,

—vs.—

WILLIAM J. SANDERS, Secretary of the State Board of Education of the State of Connecticut, *et al.*,

Defendants.

STATE OF CONNECTICUT,
COUNTY OF HARTFORD, *ss.*:

EDGAR W. DAVIS, being duly sworn, deposes and says as follows:

1. He is one of the Plaintiffs in the captioned action and resides at Dean Road, East Lyme.

2. He is a taxpayer of the State of Connecticut and is Superintendent of Schools for the Town of East Lyme. He has been engaged in management in the public schools for twenty years. He has served as President of the Connecticut Association of Public School Superintendents and is an active member thereof. He is immediate past president of the Horace Mann League of America, Inc., a national organization dedicated to the preservation and improvement of public school education.

3. His conscience is offended by Public Act 791 and he strongly feels that this Act injures him as a taxpayer and

injures the public school systems by which he is employed and to which he is deeply committed.

4. Public Act 791 definitely has siphoned off financial support from the public school systems at a time when Connecticut already lags behind the national average for state support of public schools. In Connecticut state support is approximately 26 percent of the cost of operation, whereas the national average is approximately 40 percent.

5. Further dimunition in support for the public schools will further adversely affect the public schools and cause the deterioration of the quality of education and public confidence therein.

6. He has personally observed that non-public schools produce racially, economically and academically inbalanced schools in that:

a. Non-public schools cater to students of higher academic capabilities and reject students who then enroll in the public school system. As a result, they siphon off a proportion of students with higher academic capabilities and create an inbalance in the public schools with respect to the spectrum of academic capabilities.

b. Diocesan high schools generally establish quotas as to the number of children that will be enrolled from any one parish.

c. Non-public schools generally charge tuition and impose other costs which often are prohibitive to economically deprived persons so that economically disadvantaged children constitute a far greater proportion of the students in the public school system.

d. The public school system is charged with, and tends to foster the integration and universal social concepts.

Producing an inbalance on religious, ethnic, racial or academic bases would materially impair efforts of the public school systems and of the public generally to improve social balance and universal social awareness and justice. Public school systems generally tend to utilize multi-ethnic curricula and approaches to the problems of educational and community development.

7. He strongly believes that aid rendered to non-public schools will promote invidious discrimination and segregation by supporting private schools presently in existence by permitting some of these schools to increase their enrollment and by fostering the creation of new non-public schools.

8. He strongly believes that this Act will aggravate the inbalance which already exists in the public school system and strengthen the tendency for some parents to enroll their children in non-public schools, further increasing the likelihood of two school systems, especially in the larger cities of the State—a public school system predominately poor, inadequate and imbalanced by the number of economically disadvantaged, academically disadvantaged, and minority students and a non-public school system predominantly white, affluent and academically selective.

/s/ Edgar W. Davis
Edgar W. Davis

Sworn and subscribed to before me this 19th day of June, 1970.

Lewis Rabinovitz
Notary Public

Lewis Rabinovitz
Notary Public
My Commission Expires Mar. 31, 1971

APPENDIX P

Affidavit of Rita Johnson

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil Action No. 13432

CONNECTICUT CIVIL LIBERTIES UNION, *et al.*,

Plaintiffs,

vs.

WILLIAM J. SANDERS, Secretary of the State Board of Education of the State of Connecticut, *et al.*,

Defendants.

STATE OF CONNECTICUT,
COUNTY OF HARTFORD, *ss.*

RITA JOHNSON, being duly sworn, deposes and says as follows:

1. She is one of the Plaintiffs in the captioned action and resides at 1562 Albany Avenue, Apartment B 2, Hartford, Connecticut 06112.

2. She is a taxpayer of the State of Connecticut and she has one child enrolled in the public schools of Hartford. The school in which her child is enrolled has an overwhelmingly large proportion of Negro children. She is a Black American.

3. Her conscience is offended by Public Act 791 and she strongly feels that this Act injures her as a taxpayer and injures the public school system in which her child is en-

rolled and to which she is deeply committed. This Act siphons off significant financial support from the public school system in which her child is enrolled, thereby rendering it less effective than it might otherwise become if fully funded.

4. By supporting non-public schools with restrictive enrollment practices or requirements which produce atypical enrollment, this Act presently injures the public school system and will injure it even more severely as time progresses. The disproportionate enrollment of minority group students in urban schools has produced a marked tendency for white middle class parents to enroll their children in non-public schools or to move to suburban communities. This, in turn, produces a snowballing reaction in that the school system suffers as balance and widespread community support and interest are destroyed, causing further flight from the public school system.

5. She has not attempted to enroll her child in a non-public school because she is committed to an educational system which is open to all and which strives to maintain a multiethnic character and approach to the problems of education and community development. In contrast she strongly believes that the non-public schools are racially and otherwise segregated either by religious or other requirements or by residential patterns. She strongly believes that the student body of most non-public schools includes a disproportionate number of students from relatively affluent and caucasian backgrounds relative to the number of students from financially and educationally deprived black and Puerto Rican backgrounds based upon the urban areas in which they relocated. This imbalance cannot help but promote and aggravate imbalance in the public schools which her child attends and reduce the opportunity

for her child to obtain the best possible education in a pluralistic environment.

6. She is grievously concerned over the lack of understanding of racial and economic problems faced by minority groups in this country. She firmly believes that non-public schools do little if anything to create an understanding and awareness of the problems of the minority groups and thereby fail to improve the lot of her race or of other minorities.

7. She is further aggrieved by the requirement that she pay taxes for the support of institutions following such discriminatory practices and as to which she has no effective voice. In contrast to the public school system which has a board of education which she elects and which is responsible to the City Council which she elects and to which she may direct her grievances and of which she can attend meetings, the non-public schools are truly non-public. She has no voice in their operation, no control over their actions, and no way to challenge their practices except by the present action when they seek and obtain substantial state aid.

8. She reaffirms all of the allegations of Paragraphs 18-26 of the complaint herein as being true to the best of her knowledge and believes they provide the basis upon which she feels she is aggrieved under the Fourteenth Amendment to the United States Constitution.

/s/ Rita Johnson
Rita Johnson

Sworn and subscribed to before me this 23rd day of June, 1970.

Lewis Rabinovitz
Notary Public

Lewis Rabinovitz
Notary Public
My Commission Expires Mar. 31, 1974

APPENDIX Q

(See opposite) ☞

Public School	Private School	Total	Public Schools Black Pupils	Private Schools Black Pupils

Town	Total Enrollment	Public School Enrollment Number	Public School Enrollment Percent	Private School Enrollment Number	Private School Enrollment Percent	Total Number Black Pupils	Public Schools Black Pupils Number	Public Schools Black Pupils Percent of Total In Town	Private Schools Black Pupils Number	Private Schools Black Pupils Percent of Total In Town	Public School Percent Spanish Enrollment	Private School Percent Spanish Enrollment
Hamden	11,070	9,579	86.5	1,491	13.5	484	468	96.7	16	3.3	.3	.2
Hartford	33,612	28,034	83.4	5,578	16.6	12,697	12,411	97.7	286	2.3	16.0	4.8
Meriden	13,506	11,066	81.9	2,440	18.1	403	403	100.	0	0.	6.4	3.1
New Britain	18,016	14,694	81.6	3,322	18.4	1,124	1,094	97.3	30	2.7	7.0	1.8
New Haven	27,173	21,184	78.0	5,989	22.0	11,401	10,745	94.2	656	5.8	6.9	1.3
Waterbury	25,225	17,699	70.2	7,526	29.8	3,410	3,280	96.2	130	3.8	6.7	.9
West Haven	11,827	9,353	79.1	2,474	20.9	661	642	97.1	19	2.9	.8	0
Total	140,429	111,609	79.5	28,820	20.5	30,180	29,043	96.2	1,137	3.8		

Column (1) equals (2) plus (3)
Column (2) and (5) - Appendix F
Column (3), (6) and (8) - Appendix G
Column (4) equals Columns (5) plus (6)
Column (7) - 1969-70 Figures of Appendix F

MINORITY ENROLLMENT

NON-PUBLIC SCHOOLS 1968-1969

Total Number of Schools	379
Total Enrollment	125, 366

	Number of Schools	Total Enrollment
Non-denominational	98	22, 861
Roman Catholic Affiliated	264	100, 262
Other Religions Affiliated	17	2, 243

Plaintiffs' Exhibit 8

DETAILS CONFIDENTIAL

N. P. FARQUHAR
12-A WEST LANE
BLOOMFIELD, CONN. 06002

following are statistics for 61 Connecticut independent schools reporting to the tional Association of Independent Schools 59 are in CAIS All have open enrollment ices and all seek to employ minority-group members on faculties In these ures it will be seen that 58 schools had minority-group students enrolled in the of 1969 and 22 had minority-group teachers Percentages of minority group ients appear only when the percentage exceeded 5%

Total Enr.	Negro Enr.	Total Scholarships	$ Value	Minority Scholarships: Full	Part	$ Value	Minority Faculty	Cross % Minority Students	
100	3	2	6,000	2	0	6,000			
270	5	35	65,000	3	1	10,400			
105	8	11	8,500	0	0	xxxxx		7.6	
60	1	0	xxxx	0	0	xxxx			Students all under psychiatric treatment
110	4	13	25,330	0	4	8,600	✓		
140	8	26	21,800	6	2	9,600	✓	5.7	
316	19	29	13,500	0	14	9,000	✓	6.0	
200	2	4	5,360	2	0	1825			
90	1	4	3,400	0	1	900			
136	7	28	18,500	1	6	4,000		5.1	
580	21	102	206,750	12	8	59,500	✓		
401	3	10	10.545	3	1	3.940	✓		
312	20	5	14,000	5	0	14,000		6.4	
299	5	13	12,682	3	1	5,472			
360	14*	53	40.350	1*	16*	17,500			* Blacks only Other minorities reflected in scholarship figures
192	9	12	11,500	4	1	7,200	✓		
202	6	23	41.920	5	1	20,400			
165	0	0	xxxx	0	0	xxxx			
163	3	14	9.280	2	0	2,920			
388	16*	71	174,825	12*	5*	54,425			
180	24	37	66.000	26	5	55.000	✓	13.3	
227	4	17	34.200	2	2	8.000			

DETAILS CONFIDENTIAL

N. P. FARQUHAR
12-A WEST LANE
BLOOMFIELD, CONN. 06002

Total Emp	Black Emp.	Total Similar ships	$ value	Minority Seafarers Full	Part	$ value	Hourly Rate	Over 55 annual
154	5	12	8,710	2	0	2.380	✓	
443	21	49	44,000	Not reported			✓	
80	7	14	17,500	7	0	10,850	✓	8.8
105	4	22	18,635	0	2	1.925	✓	
734	3	8	6,400	2	1	4,100		
350	4	9	9.000	3	0	4,500		
437	29	81	120,000	23	5	64,000	✓	6.6
203	2	13	9.860	0	2	670		
240	14	32	35,480	8	7	20,000	✓	5.8
398	19*	78	174,000	21*	1*	66,300	✓	
193	2	14	7.000	0	0	" "		
204	4*	16	40,000	6*	0*	23.400		
184	5	21	43,000	4	1	16,200		
368	12	36	38,700	1	9	15,800	✓	
250	5	11	36.600	5	0	21,500	✓	
162	17	51	104,475	9	6	45,850		10.5
300	10	54	58,250	1	3	4,900	✓	
329	17	17	16,525	3	5	5,125		
457	15	32	21,109	7	6	9.490		
195	4*	19	44,445	5*	0	17,500		
247	16	56	103,450	12	4	51,300		6.5
140	9	20	25,000	7	2	16.000		6.4
229	3	6	7.200	2	1	3.280		

* Black's only for other min groups not in
* " " "

CONFIDENTIAL

N. P. FARQUHAR
12-A WEST LANE
BLOOMFIELD, CONN. 06002

Total Enr	Black Enr	Total Scholarships	$ Value	Minority Scholarships Full	Part	$ Value	Minority Fac	Over 50% Min.	
317	2	29	18,400	Not reported					
250	5*	30	31,150	6*	0	8,600			* Blacks only in col 2. Other minority groups included in scholarship awards
44	2	20	9,850	0	1	2,000			
2[illegible]	20	114	191,975	9	9	48,600			
35	7	26	30,835	3	4	11,985	✓		
30	0	12	8,000	0	0	xxxx			
39	11	56	73,600	5	6	15,200			
25	8	27	69,100	5	2	24,500			
4	0	2	1,700	0	0	xxxx			
30	10*	26	47.830	7*	6*	31,630		6.7	Blacks only in col 2 note
35	12	11	14,012	11	0	14,012	✓		
11	9*	18	46,700	6*	5*	35,200	✓		" " " " "
5	1	25	15,000	1	0	1,500			
20	5	14	13,163	3	2	5,813	✓		
8	3	13	12,100	0	3	3,800			
2[illegible]	19	32	81,150	12	7	62,650		9.0	
43	523	1635	2,430,806	280	167	945,932**	22	14	** Some not reported

18 - These totals should be checked).

Plaintiffs' Exhibit 14

(Letterhead of Wiggin & Dana, 205 Church Street, New Haven, Connecticut 06508)

May 20, 1970

RE: *CCLU* v. *Sanders*

Mr. Peter L. Costas
Attorney-at-law
#111 Pearl Street
Hartford, Connecticut

Dear Peter:

Per request and in order to avoid taking of various depositions, I enclose herewith three (3) copies of the following instruments:

(1) *Connecticut Association of Independent Schools, 1969-70 Survey of Enrollments and Faculties.*

Checking subsequent to the preparation of this list, has indicated there are a few minor discrepancies, but I believe that this survey shows with substantial accuracy the total student body of the various schools which are members of the Association, together with the number of students in Connecticut and the faculty ratio.

(2) Instrument headed *"Details Confidential"*

This is a survey performed in Connecticut on behalf of the National Association of Independent Schools. It covers sixty-one (61) Connecticut Independent Schools, fifty-nine (59) of which are members of the Connecticut Association of Independent Schools. It excludes proprietary schools.

endowed academies, serving as local high schools and church-related schools who are not members of the National Association. The schools are listed by code letters. The list shows the total enrollment, the black or minority group enrollment, the total number of scholarships available at the school, the total value of all scholarships, the number of minority students receiving scholarships, the value of scholarships awarded to minority students and a list of the schools which have minority faculty members. You will note that of the total enrollment of independent schools, approximately 3% is black and that virtually all of these are on full or part time scholarships.

The N. P. Farquhar referred to on the face of this schedule, is the Executive Secretary of the Connecticut Association of Independent Schools.

Both instruments are taken from the files of the Connecticut Association of Independent Schools at 12-A West Lane, Bloomfield.

Very truly yours,

/s/ JOHN Q. TILSON
John Q. Tilson

JQT/rmm
Enclosures